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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,009	12/28/2005	Toru Sawada	81844.0048	4064
26/021 7590 02/02/2010 HOGAN & HARTSON L.L.P. 1999 AVENUE OF THE STARS SUITE 1400 LOS ANGELES, CA 90067				
EXAMINER BERDICHEVSKY, MIRIAM				
ART UNIT		PAPER NUMBER		
1795				
NOTIFICATION DATE		DELIVERY MODE		
02/02/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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***Advisory Action
Before the Filing of an Appeal Brief***

Application No.

10/563,009

Applicant(s)

SAWADA ET AL.

Examiner

MIRIAM BERDICHEVSKY

Art Unit

1795

–The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

THE REPLY FILED 19 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See *Continuation Sheet* (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-7, 9 and 10.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

The Examiner notes that the response is based on the claims as presented 7/16/2009. Although Watanabe teaches a layer thickness between 50 and 200 angstroms Watanabe does not teach away from other thicknesses. In response to Applicant's arguments that the Examiner has provided sufficient evidence that increasing the thickness of a layer will decrease diffusion by increasing the region for blocking undesired contaminants, the Examiner disagrees. The Examiner does not find evidence of the opposite i.e. the increase in diffusion through a layer as the layer thickness increases. Moreover, the notion of increasing the thickness of a barrier or blockade to prevent contaminants from passing through to the other side is routinely seen and logical. Moreover from the diffusion equation it is known that diffusion is dependent on time and position (distance traveled, in this case through a given layer thickness). In addition, temperature is known to increase diffusion because contaminants possess an increase in kinetic energy. Because solar cells are subject to high temperatures and ideally operate for long periods of time, diffusion of contaminants and degradation are an on going problem. From the equation and taking temperature and operating time into consideration one of ordinary skill would logically and routinely increase the thickness of a barrier/obstacle with the purpose of impeding diffusion thereby increasing the time it takes for diffusion to the same position. Finally, Applicant's arguments of criticality as a result of the combination of percent oxygen and thickness are moot as pertaining to the un-entered amendments.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Alexa D. Neckel/
Supervisory Patent Examiner, Art Unit 1795

/M. B./
Examiner, Art Unit 1795

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 20100126

Continuation of 3. NOTE: the amendment has altered the scope of the claims.